IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

CRL.A.No. 1059 of 2002(A)

CC.304/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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APPELLANT:

MR.SUNNY M.JOSEPH, S/O. JOSEPH,
AGED 30 YEARS, VELLARAMKUNNEL HOUSE,
KODENCHERI.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

MR. JOSEPH N.DOMINIC S/O. DOMINIC,
AGED 33 YEARS, NELLIMALAMATTATHIL HOUSE,
THERTHALLY POST, ERUVATTY VIA., KANNUR

BY ADV. SRI.K.SURENDRA MOHAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A.No.1059 of 2002 (D)

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Dated this the 27th day of March, 2007

J U D G M E N T

The complainant in C.C.No.304/2001, on the file of Judicial Magistrate of the First Class Court-II, Thamarassery, is the appellant. He preferred a complaint under Section 138 of the Negotiable Instruments Act, in short 'the Act', against the respondent-accused, before the court below. While the complainant examined himself as PW.1 and marked seven documents, the respondent had examined two witnesses and marked Exhibits D1 series and D2. The learned Magistrate found that the presumption available under the law, in favour of the complainant, was rebutted by the respondent and, therefore, dismissed the complaint and acquitted the accused. Hence, this appeal on obtaining leave.

2. I have heard the arguments advanced by the learned counsel for the appellant as well as the learned counsel for the respondent. The case put forward by the appellant is that, in discharge of a debt of Rs.2,00,000/-, due to the appellant,

the respondent issued Exhibit P1 cheque. It was dishonoured when presented, and the amount was not settled, when demanded through lawyer notice, as contemplated under the provisions of the Act. Hence, the complaint was filed. The consistent case of the appellant is that the respondent borrowed an amount of rupees two lakhs. However, the respondent had examined DWs.1 and 2, to prove that he had a transaction with one Joy Orathel, who was conducting a chit fund in the name of Orathel Chit Funds. The respondent subscribed a chit and bid the same. As a security, he issued Exhibit P1 cheque. DW.1 was the collection agent of the chit fund and DW.2 was the clerk. Exhibit D1 is a pass book issued by the chit fund. Exhibit D1(a) is an entry made by DW.1, in the pass book, which shows that a signed blank cheque leaf bearing No.1661, for Rs.50,000/-, along with blank stamp paper, were received by DW.1, on behalf of the Orathel Chit Funds. It was not returned, even after completion of the transactions by the respondent. The case of the respondent, therefore, is that the said cheque No.1661 had been handed over to the appellant, the brother-in-law of the foreman of the Orathel Chit Fund, and he made use of it, after writing

and inflating an imaginary figure, so as to harass the respondent.

3. I have gone through the evidence of PW.1 as well as DWs.1 and 2. Learned counsel for the appellant had submitted that DWs.1 and 2, though were the employees of Orathel Chit Funds, are the friends of the respondent and, therefore, they deposed in favour of the respondent. Except this submission, there is no further evidence adduced, to contradict the evidence of DWs.1 and 2. There was no suggestion made while DWs.1 and 2 were in the box, to discredit them and also to challenge their evidence, that they were speaking falsehood in favour of the respondent. When I appreciate the entire evidence that is available on record, I accept the evidence of DWs.1 and 2. In view of Exhibit D1 pass book, D1(a) entry, and Exhibit P1 cheque leaf being the same as that of the cheque number endorsed in Exhibit D1(a), I hold that, the case of the respondent that the blank cheque leaf entrusted with Orathel Chit Funds had been handed over to the appellant and he made use of it for his own interest. There was absolutely no transaction between

the appellant and the respondent, there being no evidence to that effect.

In the result, I find nothing to interfere with the findings arrived at by the learned Magistrate. Hence, the appeal fails and is dismissed.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A.No. 1059 of 2002 (D)

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J U D G M E N T

27th March, 2007